

Application No. 09/975,698  
Amendment dated August 4, 2003  
Reply to Office action of July 15, 2003

#### REMARKS

Claims 1-24 (claims 15-18 being withdrawn) are pending in the application after this amendment. The comments set forth below specifically address the art rejections that the Examiner set forth as not fully addressed in the July 15, 2003 Office action. The comments set forth below also incorporate the comments of applicant's April 18, 2003 response so that the present response are now fully responsive to the December 18, 2002 Office action. The amendments, cancellation, and/or withdrawal of claims is not to be considered in anyway an indication of applicant's position on the merits of the amended, cancelled, and/or withdrawn claims. The rejections set forth by the Examiner in the December 18, 2002 Office action are respectfully traversed. Reconsideration of the claims is requested in view of the foregoing amendments and the following remarks.

#### 35 U.S.C. §121

The Examiner has indicated that restriction to one of the following inventions is required under 35 U.S.C. §121:

- I. Claims 1-14, drawn to a method of preserving plant tissue, classified in class 427, subclass 4.
- II. Claims 15-18, drawn to preserved plant tissue, classified in class 428, subclass 22.

As indicated by the Examiner, a provisional election of claims 1-14 was made with traverse. Applicant herein affirms this election. Claims 15-18 are withdrawn from further consideration as being drawn to a non-elected invention and these claims have now been withdrawn.

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35 U.S.C. §112

The Examiner rejected claims 8-10 and 13 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that applicant regards as the invention.

More specifically, the Examiner states that the term "rubber like" in claim 8, step (c), is indefinite because the claim(s) include(s) elements not disclosed. Applicant would like to stipulate that the term "rubber like" can be defined as "flexible and pliable, displaying substantial elasticity, and bending freely under pressure." Accordingly, claim 8, step (c) could be read as "any solution imparting a 'flexible and pliable, displaying substantial elasticity, and bending freely under pressure' flexibility." Applicant would be amenable to amending claim 8 if the Examiner still feels that this is necessary.

The Examiner also states that the use of registered trademarks in claims 9 and 13 renders the claim(s) indefinite. Applicant has also found that Plastic Dip International, the owners of the registered term PLASTI DIP® describes their product as a "multi-purpose rubber coating." Applicant, however, feels that the substitution of this phrase (especially the term "coating") would render the claim confusing as applicant does not use the product for this purpose. Similarly, applicant has found that the registered term PLASTI DIP® is for "Air Dry Plastic Coating for Hand-Held Articles," but feels that the substitution of this phrase would render the claim confusing as applicant does not use the product for this purpose. Applicant notes that MPEP § 2173.05(u) specifically states that "The presence of a trademark or trade name in a claim is not, *per se*, improper under 35 U.S.C. § 112, second paragraph, but the claim should be carefully analyzed to determine how the mark or name is used in the claim." Applicant respectfully submits that the presence in the claim does not cause confusion as to the scope of the claim. Applicant, however, would be amenable to amending the claim if the Examiner could come up with a suitable limitation.

The Examiner also stated that "it is not clear whether claims 8, 9, and 10 are directed to the compositions of the saturation mix, the coating mix, or both." In

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accordance with the Examiner's interpretation, the claim includes all three of the scenarios set forth by the Examiner (one mix may be used instead of two, both the saturation and coating mixes are the same, or only one is defined by the claim, but the other is still unspecified by the claim).

35 U.S.C. §102 and §103

The Examiner rejected claims 1-14 under 35 U.S.C. §102 and/or 35 U.S.C. §103 as being anticipated by U.S. Patent No. 2,658,836 to Fessenden (the "Fessenden reference") or obviated by the Fessenden reference in combination with U.S. Patent No. 4,272,571 to Romero-Sierra (the "Romero-Sierra reference") or the Fessenden reference in combination with U.S. Patent No. 3,563,780 to Waszkiewicz (the "Waszkiewicz reference").

Turning first to the Examiner's rejection of claims 1-4 and 6-14 as being anticipated by the Fessenden reference, applicant has amended claim 1 to specifically include the limitation that the saturation mix imparts "extreme flexibility and little or no chemical cross-linking in the resulting saturated plant tissue." This limitation is not new matter as it is specifically set forth in the original specification at page 13, lines 1-2. This limitation is not taught or suggested by the Fessenden reference alone or in combination with the other known references. Applicant respectfully submits that, as amended, claim 1 is now allowable and that dependent claims 2-14 are allowable as being dependent on an allowable independent as well as for reasons specific to the dependent claims.

Applicant turns next to the Examiner's rejection of claim 5 as being unpatentable under 35 U.S.C. §103(a) over the combined disclosure of the Fessenden reference in view of the Waszkiewicz reference. Applicant traverses the rejection of these claims.

Applicant respectfully submits that claim 5 is dependent on claim 1 which is allowable for the reasons discussed above. Claim 5 should be allowable because it is

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based on an allowable independent claim as well as for the further limitations contained therein.

Applicant turns next to the Examiner's rejection of claims as being unpatentable under 35 U.S.C. §103(a) over the combined disclosure of the Fessenden reference in view of the Romero-Sierra reference. Applicant traverses the rejection of these claims.

Preliminarily, applicant notes that the several of the claims have been amended. Claim 8, as amended, is specifically limited to the coating mix. Claim 19 specifically states that the saturation mix is composed of a silicone styrene elastomer resin mix (the original option (d) of original claim 8). Claims 9, 10, and 20 now depend from claim 19. In the December 18, 2003 Office action, the Examiner focused on option (b) "natural rubber solution" of the Markush group of original claim 8. Claim 19 and dependent claims 9, 10, and 20 necessarily call for option (d) "a silicone styrene elastomer resin mix" of the Markush group of original claim 8. This limitation is not disclosed or suggested in the Fessenden reference.

The Examiner states that it is her position that the polymerization step ("when multiple polymers are used together, they are polymerized together using catalysts (col. 12, lines 15-26") will create copolymers of the polymers used in applicant's claimed invention. Applicant does not concur with the Examiner's position that this is an inherent result. Applicant respectfully requests evidence of such inherent results be presented if this rejection is to be maintained.

Applicant would also like to point out that the "polymerization step" discussed by the Examiner is only taught or suggested in the Fessenden reference in connection with the envelopment stage, not the impregnation stage. Claim 19 specifically requires that the "*saturation mix* is composed of a silicone styrene elastomer resin mix." (Emphasis added.) Applicant notes that the Examiner recognized that the Fessenden reference teaches that the "*enveloping mixture* (acting as the coating mix of Applicant['s claimed invention]) may be made from a combination of polymers, such as polystyrene and organic silicon resinous compounds." (Emphasis added.) Applicant

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respectfully submits that the because the Fessenden reference does not teach or suggest the "polymerization step" in connection with the envelopment stage, applicants pending claims that specifically recite copolymers in the saturating step should be allowable.

Applicant further submits that the disclosure of the Romero-Sierra reference fails to fill in the gaps of the teaching of the Fessenden reference and, accordingly, claims 9, 10, 19, and 20 are patentable over the prior art.

The Romero-Sierra reference discloses a composition, and method of use of the composition, for preserving flowers. The composition contains a silicone fluid, such as dimethyl siloxane polymer. See column 4, line 50. The Romero-Sierra composition further contains, as essential components, a carboxylic acid (column 4, lines 4-11), a urea-containing compound (column 4, lines 14-18), and a sodium or other alkaline citrate (column 4, lines 32-35).

The Romero-Sierra reference neither discloses nor suggests the presently claimed silicone styrene elastomer resin mix of claim 19, nor the copolymers of dimethylsiloxane and polystyrene as claimed in claims 9, 10, and 20.

According to the method of the present invention, including the step of saturating a plant according to claims 9, 10, 19, and 20, additional components that are essential according to the Romero-Sierra reference are not required. For example, the method of the invention does not require the use of a carboxylic acid in order to preserve red, pink, or yellow colors. As taught in the Romero-Sierra reference, at column 4, lines 10-11, such carboxylic acid is required in sufficient concentration. "Too low a concentration [of carboxylic acid] causes the colours to appear faded, especially in red flowers."

Also, the method of the present invention does not require the use of a urea-containing compound to prevent loss of pigments from the blooms, as taught in the Romero-Sierra reference at column 4, lines 19-23. "Insufficient thiourea or other urea-containing compound causes the colours to appear dead and lacking in their original

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fresh beauty, and some colours may even change completely, as for instance a blue orchid may turn a sickly red or pink."

Also, the method of the present invention does not require the use of a sodium or other alkaline citrate as a color preservative for blue, purple, or orange blooms. As taught in the Romero-Sierra reference at column 4, lines 34-35, "Omission of sodium citrate causes the colours to appear faded."

The Romero-Sierra reference does not disclose or suggest the use of a saturating solution containing a silicone styrene elastomer resin mix, as called for in the present claims. The method of the claimed invention, including the step of saturating using such mix, preserves flowers, and maintains the colors of flowers, without the need for these additional ingredients. Applicant submits, accordingly, that the inclusion in the claims of the features of a silicone styrene elastomer resin mix and of a copolymer of dimethylsiloxane and polystyrene provides a patentable distinction over the prior art.

For these reasons, applicant respectfully submits that the claims, as amended, patentably distinguish over the combined disclosure of the Fessenden reference and the Romero-Sierra reference or the individual disclosures of these references. Accordingly, the Examiner is requested to withdraw the rejection of 9, 10, 19, and 20 on this ground.

#### Additional Claims

New independent claim 21 has been added and incorporates subject matter from the original claims. No new matter has been added. For the reasons discussed above pertaining to 9, 10, 19, and 20, applicant respectfully suggests that this claim, and claims 22-23 that depend therefrom, are allowable.

New independent claim 24 has been added and incorporates subject matter from the original claims. No new matter has been added. For the reasons discussed above pertaining to 9, 10, 19, and 20, applicant respectfully suggests that this claim is allowable.

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Concluding Remarks

Reconsideration of the claims is respectfully requested in view of the above amendments and remarks, and early notice of allowance thereof is earnestly solicited.

Please charge Deposit Account No. 50-2115 for any additional fees which may be required.

Respectfully submitted,



Karen Dana Oster  
Reg. No. 37,621  
Of Attorneys of Record  
Tel: (503) 810-2560